

Message

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Sent: 3/14/2019 10:21:30 PM
To: Sikes, Monica [monica_sikes@fws.gov]; Amy Trahan (amy_trahan@fws.gov) [amy_trahan@fws.gov]
CC: Martinez, Maria [Martinez.Maria@epa.gov]; Nelson, Russell [nelson.russell@epa.gov]
Subject: update on Louisiana DO criteria lawsuit
Attachments: WILDLIFE-#315171-v1-Order_on_Motion_for_Voluntary_Remand_-_Gulf_Restoration.PDF; 20140305_letter_Service to EPA_DO BE Concurrence.pdf

Hi Amy and Monica,

I wanted to follow up with the both of you on the status of the lawsuit in Louisiana regarding EPA's approval of Louisiana's DO criterion (2.3mg/L) in those waters of the eastern Lower Mississippi River Alluvial Plain (eLMRAP) ecoregion. I've discussed it some with Amy, but I know that Monica was present when Russell Nelson and Phil Crocker came down to Lafayette to discuss this issue last year and I thought I should update her as well. In short, on February 25, the court remanded the action back to EPA and vacated our previous approval of the criterion throughout all of the ecoregion, except in the permit of one discharger (see attached). The discharger is located in subsegment LA040404 (New River), which to my understanding is not presently determined to be critical or potential habitat for the heelsplitter or Gulf sturgeon. In effect, this means that EPA's previous approval no longer applies, so the criteria revert back to the previously applicable criteria of 4mg/L (estuarine waters) or 5mg/L (freshwaters). We are now back in the position of evaluating the state's submission proposing the criterion of 2.3mg/L across the ecoregion, or an alternate criterion depending on whether the state wishes to re-propose a new criterion.

Obviously, the primary reason for remand and vacatur was the lack of consultation under 7(a)(2) of the ESA, so we will need to move forward with that process at some point. In the meantime, we wish to continue working with you all on an informal basis (i.e. 'technical assistance') to identify possible pitfalls with the previous minimum criterion (2.3mg/L) as discussed in the previous biological evaluation, and to perhaps point us in the right direction as to what would be protective of listed species where they occur in eLMRAP. We understand that FWS had reservations with this criterion before, so any clarification of such concerns would be very helpful to us. Any studies or other types of documentation with respect to the DO needs of Gulf sturgeon and the heelsplitter in Louisiana not previously cited would be welcome. We recently became aware of a March 5, 2014 letter to EPA Region 4 (also attached) regarding consultation with Region 4 on their approval of amended DO criteria in Florida, which includes a brief discussion of DO criteria applied in various parts of the state and FWS's concurrence. Any such similar information regarding FWS consultations with other Regions (specific to DO and similar listed species in fresh/estuarine waters) would also be welcome.

If possible, we'd like to schedule a conference call with you all sometime in the next few weeks or so (or month?) to discuss this issue further. I know that Russell and Phil had discussed having regular calls with you all and the state, but frankly, I wasn't sure if there was much to discuss until now. Once you've had a chance to look over this stuff again and can find a time that is convenient for you, perhaps we can schedule a call among our 3 agencies to kickstart discussions once again? I think it would be helpful for LDEQ to also get a sense of any specific concerns with their criterion moving forward.

Again, thanks so much for working with us on this and other WQS issues in Louisiana. Please feel free to call or write with any questions. Have a good one!

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